



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/OOAE/OLR/2013/1404

Property : Ground Floor Flat, 14 The Avenue,
Willesden, London NW6 7YD

Applicant : Miss S Downs

Representative : Mr Roger Weston FRICS of Symingtons
Chartered Surveyors

Respondent : Cavernlodge Limited

Representative : Mr J G Evans BSc (Hons) MSt (Cantab) Dip
Surv MCIM FRSA FRICS

Type of Application : Section 48 Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mr N Martindale FRICS

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on
4th March 2014

Date of Decision : 25th March 2014

DECISION

DECISION

The Tribunal determines that the premium payable for the lease extension in respect of the Garden Flat No 14 The Avenue, London NW6 7WD (the property) is £40,714.

BACKGROUND

1. This matter came before us for hearing on 4th March 2014 as a result of an application made by Miss Downs under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act).
2. A notice of claim under Section 42 of the Act was served by Miss Downs on 6th March 2013 suggesting a premium of £37,500. A counter notice pursuant to Section 45 of the Act was made by Cavernlodge Limited, the Respondent, in which a counter proposal of £43,310 was made. The application to us is dated 28th October 2013.
3. Prior to the Hearing we were provided with a bundle of documents for consideration which included a brief summary, copies of the application, the original notice of claim and a counter notice and copies of the register of title in respect of the freehold and Miss Downs' property. We were also provided with a copy of the lease, which is dated 28th June 1979, the draft form of lease to be entered into which we were told was agreed and the reports of Mr Weston and Mr Evans.
4. There had been a good deal of agreement reached between the parties and at the commencement of the Hearing we were able to record that the following matters had been agreed between the respective valuers.
 - Capitalisation rate at 7%
 - Deferment rate at 5%
 - Relativity at 85%
 - Valuation date of 6th March 2013
5. The matters that we were required to determine were the extended unimproved value of the lease and the existing lease values. Mr Weston gave his opinion first and relied upon his report which is dated 14th February 2014. We do not need to go into any great details in respect of the report as this is a document common to both parties. We do, however, record that during the course of the Hearing the measurement of the subject property was agreed at 735 square feet. The nub of the dispute centred on the extended lease value of an unimproved property. Mr Weston told us that the building at 14 The Avenue comprised four flats and that Miss Downs had bought in 1999. It appeared from the register of title that Cavernlodge had owned since 1996. It seems that quite recently Miss Downes has carried out extensive alterations and refurbishment works to the property and a good deal of information was provided in respect of those items of work, which we were told by Mr Evans should be considered as if the alterations had the consent of the freeholder.

6. Mr Weston relied upon the comparable details of sales of Flats 1 and 2, 14 The Avenue. Flat 1 was sold in January of 2012 for £420,000 which he said equated to a square footage rate of £504. Flat 2 at first floor level was sold in April 2011 for £361,250 which equated to a square footage rate of £510. Mr Weston had then taken the average of the two flats which he calculated came to £372,645, deducted £12,000 for condition in 2012 of the subject flat and then added 7% to allow for the improvements in the market from 2012 to an adjusted level of £385,000. It did not appear that he had made any market adjustments for Flat 2 which had been sold in April 2011.
7. He told us that £12,000 was his best estimate relying on his experience of the cost of the general improvements that one might expect to find in a flat that had been created at the end of the 1970s.
8. Insofar as the 7% uplift for the improvement to the market was concerned, as we have indicated he gave no consideration as to the increase from 2011 to the valuation date in March of 2013 but only applied the uplift to the sale of Flat 1 from January of 2012. He told us he thought there had been little movement in the market between 2011 and 2012.
9. His report also dealt with matters that were agreed and we do not therefore need to go into detail but his final conclusion was that the premium to be paid for the lease extension should be £37,359. He had attached a valuation showing how that figure had been reached, although it was marked subject to contract and without prejudice he told us that this epithet should be removed.
10. He was asked by us to comment on Mr Evans' evidence and he was of the view that the rear garden did not have the values attributed to it by Mr Evans in his report.
11. In cross examination from Mr Evans Mr Weston conceded that the recent improvements that had been carried out by Miss Downs were irrelevant. He had merely allowed a figure of £12,000 in respect of changes from the original condition and that accordingly the works carried out more recently by Miss Downs were not to be considered by us in assessing the value of the property. He told us he had considered evidence of other comparables but he found them unhelpful and thought that the two flats within the building were the best evidence to put before us.
12. Mr Evans then gave evidence and told us he had struggled to find contemporaneous comparables. He had used the Land Registry data for the purposes of calculating the uplift to flats 1 and 2 in the building and unlike Mr Weston had provided information for both the period from 2011 onwards and in respect of flats and maisonettes. This contrasted with Mr Weston's evidence which related to all properties in the London Borough of Brent. We should record that there was no argument by Mr Weston that the adjustments that Mr Evans had made to flats 1 and 2 dealt incorrectly with the uplift for the passage of time. We will return to this element in the findings section of the decision.

13. The main comparable relied upon by Mr Evans was the garden flat at 20 The Avenue which had not, as far as he knew, been sold. It was under offer, the agents being Foxtons, with whom he had spoken on 18th February indicating that the property value was £700,000. It apparently had an area of 697 square feet and benefitted from a much larger garden than the subject flat. By applying the Land Registry data to the valuation he concluded that the property now worth £700,000 would have been worth £652,065 at the valuation date. As further support he relied on a Tribunal decision in respect of a property at 85 Chevening Road, London NW6 6DA where he told us there was a valuation date of November 2012 and a rate per square foot of £775 had been used. He thought Chevening Road a better address than The Avenue but no copy of the decision by the Tribunal was provided.
14. At paragraph 2.12 of his report he confirmed that in his view, adjusted to the valuation date, the garden flat at No 20, The Avenue had a square footage value of £936 per square foot and similarly analysed, Flat 2 in the property had a value of £531 per square foot. In fact it seems that these figures may not be wholly correct as during the course of the Hearing it was agreed that Flat 1 was 833 square feet giving an adjusted square footage rate of £523 and that Flat 2 was 708 square feet giving an adjusted square footage rate of £549. Mr Evans was content to accept these measurements as Mr Weston had measured the flats at 1 and 2, 14 The Avenue and he had not.
15. He then went on to confirm that he did not know whether Chevening Road had a garden or what the lease terms might be and that the percentage adjustments made in paragraph 2.13 of his report were an estimate. He also sought to make provision for a 1½% uplift to reflect the value of the virtual freehold relying upon his experience in the market and other decisions.
16. Mr Evans somewhat late in the day thought that there should be an adjustment for the subject property in respect of improvements but this was in respect of those recently carried out by Miss Downs and related to the installation of a shower room for which he would have made an allowance of £10,000. He had concluded that the premium should be £50,680.
17. In questioning from us he was of the view that on analysing his discounts as set out at paragraph 2.13, leaving some 27% as attributable to the value of the garden was on the high side and should perhaps be somewhere around 10-15%. He also indicated that he made no allowance for the improved condition of Flat 20, The Avenue, which could be gleaned from estate agents particulars provided by Foxtons. When questioned by Mr Weston, Mr Evans maintained that the improvements to Flat 20 would be nothing more than an observance of the lease covenants and therefore there should be no adjustments for improvements. There was also some debate as to whether or not the square footage measurements for Flat 20 included the bathroom and circulation areas.

THE LAW

18. In reaching our decision we have relied upon the provisions of Section 48 of the Act and Schedule 13.

FINDINGS

19. We are grateful to Mr Weston and Mr Evans for having agreed so many elements of the valuation. We have, therefore, concentrated on the value of the extended lease in an unimproved condition. Mr Evans in his submissions had referred to the terms of the lease which at clause 2(3) contained the following wording:- "*(3) Whatever may be the condition thereof at the commencement of the term hereby granted from time to time and at all times well and substantially repair, decorate and keep in good repair and condition the demised premises and every part thereof ...*"
20. He was, therefore, of the view that any improvements to the flat were merely complying with the lessee's covenants and that, therefore, there should be no adjustment. Against that argument, however, he appeared to be willing to accept an adjustment of £10,000 in respect of the shower room which formed part of the improvement works recently carried out by Miss Downs and which Mr Weston himself said he did not think were relevant to the matters before us.
21. We agree with Mr Weston that the better way of considering the question of improvements is to take the original condition of the property, make a reasonable allowance in respect of the improvements that would have occurred since the 1970s and apply appropriate uplifts for the passage of time. We are content that an allowance of £12,000 is reasonable for the element of improvement to bring the flat back to the basic condition in the 1970's. Factoring the extensive works carried out by Miss Downs in our view unnecessarily complicates matters and should, in any event lead to the same value. They were not works that Mr Weston asked us to consider.
22. Mr Evans sought to introduce evidence relating to Flat 20, The Avenue which was unreliable. It was not a sale, there was no information as to the lease terms and surprisingly he made no reduction for the standard of modernisation of the property, which looking at the estate agents particulars appeared to have been quite extensive. The property is described as "*an excellent two bedroom ground floor flat in Brondesbury boasting a modern interior throughout, stunning private garden and location ideal for all local amenities*" The estate agents particular goes on to describe it as a "*fantastic two bedroom ground floor flat boasting modern interior throughout, smart bathroom and guest cloakroom.*" It seems to us quite clear that to bring this property back to the unimproved condition of the subject flat, which we would be required to do, must inevitably result in some reductions being made for the condition. That was not done by Mr Evans but most fatally this was not evidence of a sale.
23. The other property relied upon by Mr Evans was 85 Chevening Road but no copy of the decision was produced, he had no real information as to the property, the lease, nor indeed whether it had a garden. Further Mr Evans' apparent allowance in his calculations of some 27% towards the garden value in respect of flat 20 was on his own admission too high. Accordingly we find that the evidence of Mr Weston is preferable to that of Mr Evans. He has used

two flats within the building and although he failed for whatever reason, to adjust Flat 2 for the passage of time, that had helpfully been done by Mr Evans in his report. Mr Evans' evidence centres around a property under offer and another for which there is little or no information. Accordingly we felt comfortable in accepting those comparables suggested by Mr Weston as giving us the appropriate value for the subject premises in an unimproved state but with a long lease.

24. By way of explanation for the figures shown on the attached valuation we have taken the figures at paragraph 2.6 in Mr Evans' report. He had assessed the value at the valuation date for Flat 2 to be £388,987 and for Flat 1 to be £436,229. Applying the now agreed measurements for Flats 1 and 2 on our calculation gave a square footage rate, adjusted for time for Flat 1 of £523 per square foot and similarly adjusted for Flat 2 at £549 per square foot. The median of these two is £536 and applying that to the agreed square footage for the subject premises of 735 square feet, gives a figure of £393,960. From that we deduct the sum of £12,000 being the value of the improvements as assessed by Mr Weston and then add back what appears to be an uncontentioned value for the garden at 10%. This gives an extended lease value in an unimproved state of £420,156. We have, therefore, taken that figure and applied a relativity of 85% which gives the short lease value in an unimproved state of £357,133. These values factored in give the premium payable for the lease extension of £40,714 as shown on the attached valuation.

Judge: Andrew Dutton

Andrew Dutton

Date: 25th March 2014

Garden Flat No.14 The Avenue
London NW6 7YD

FLAT - Lease Extension

Long Leasehold value (improved)		n/a
Long Leasehold value (unimproved)		£420,156
Valuation Date		06-Mar-13
Expiry of existing lease		28-Jun-78
Existing Term unexpired		65.311
Capitalisation rate		7.00%
Deferment rate		5.00%
Relativity		85.00%
Short Leasehold value (unimproved) before extension		£357,133

Diminution of Landlords Interest

Landlords Present Interest

First Term

Fixed Present GR		£75
YP for 32.31 years @ 7%	12.68	£951

Second Term

Fixed Present GR		£100
YP for 33 years @ 7%	12.754	
PV £1 in 65.31 years @ 7%	0.1124	£143

Reversion to Long Leasehold Unimproved

Long leaseholder unimproved value	420156	
PV £1 in 65.31 years @ 5%	0.0412	£17,310

Landlords Present Interest

TOTAL £18,405

Marriage Value

Tenants Proposed Interest

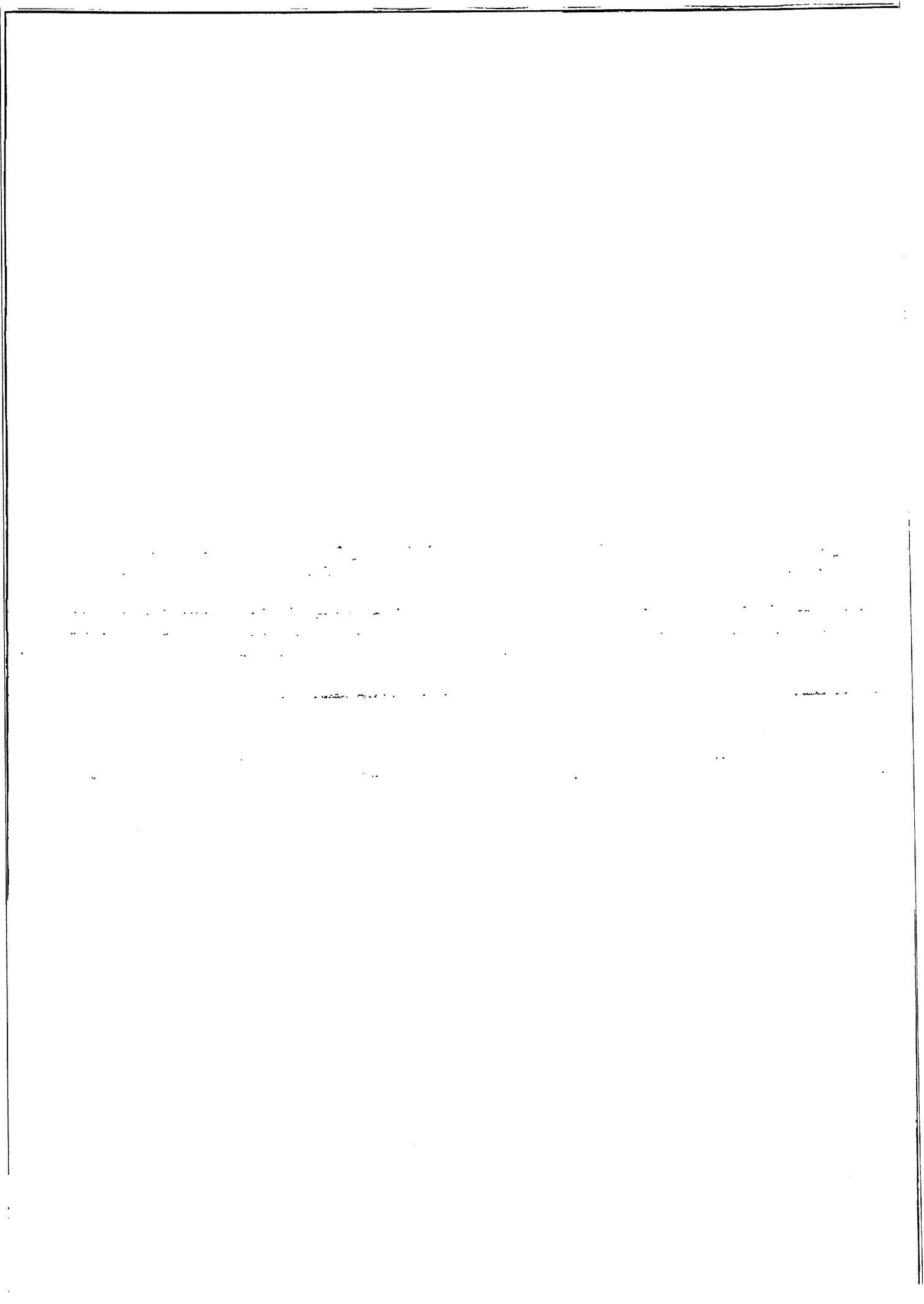
Less Tenants Present Interest	£420,156
Less Landlords Present Interest	£357,133
Less Total	£18,405
	£375,537

Marriage Value

50% share of marriage value landlords share	£44,619	£22,309
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Lease Extension Premium

TOTAL £40,714



Address	Date	Price	Comments	Price	Condition	FH Uplift	Time	Adj price.	Vol m3	per m3	Adopted	GF m2	per m2	GIA m2	per m2	Adopted
No 8	Nov-03	£775,000	R says discounted	£912,000			3.25%	£940,000	461	£2,039	£2,100	82.35	£11,415	119.37	£7,875	
			M says inflated	£700,000			4.30%	£730,000		£1,584			£8,865		£6,115	£6,215
			M's basis	£775,000			4.30%	£808,000		£1,753			£9,812		£6,769	£6,215
No 10	Jan-04	£900,000	R	£900,000	£25,000	1%	1.00%	£940,000	428	£2,196	£2,100	78.6	£11,959	152	£6,184	
			M	£900,000		2%	3.23%	£948,030		£2,215			£12,061		£6,237	£6,215
No 15	Jul-04	£1,050,000	R	£1,050,000		1%		£1,060,000	504	£2,103	£2,100	100	£10,600	225	£4,711	
			M	£1,050,000		2%		£1,071,000		£2,125			£10,710		£4,760	£6,215
			M with reduced GIA	£1,050,000		2%		£1,071,000		£2,125			£10,710		£5,412	£6,215
									392			77.72		102.56		
Applied to No 14					No 8 R	No 8 M	No 8 M	No 10 R	No 10 M	No 15 R	No 15 M					
		Volume		392	£799,308	£620,738	£687,063	£860,935	£868,289	£824,444	£833,000					
		GF		77.72	£887,150	£688,957	£762,571	£929,476	£937,416	£823,832	£832,381					
		GIA		102.56	£807,627	£627,199	£694,215	£634,253	£639,671	£483,172	£488,186					